IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 510 OF 2003

1. Shri Hornesto Joaquim
   Peidade Fernandes
   (since deceased through
   following legal heirs)

1.a Mr.Danny Fernandes.

1.b Mr.Lester Fernandes.

1.c Miss Larisa Fernandes.

All resident of Usha Sadan,
`B'Block, Flat No.1, Ground
Floor, Near Colaba Post Office
Colaba, Mumbai- 400 005.

2. Smt. Viviana Fernandes.
   residing at F-6, Mayfair
   Apartments, Luis Miranda
   Road, Margao, Goa.

3. Smt. Natalista Fernandes
   e Colaco alias Natividade
   Fernandes, residing at
   House No.845/A, Carxeta,
   Velim, Salcete, Goa. … Petitioners.

V/s.

1. Smt. Joyce Colaco alias
   Ivon Joyce Colaco,

2. Shri Ivon Colaco,

both residing at House
No.848, Carxeta, Velim,
Salcete, Goa. … Respondents.

WRIT PETITION NO. 511 OF 2003

1. Shri Hornesto Joaquim
   Peidade Fernandes
   (since deceased through
   following legal heirs)

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All resident of Usha Sadan,
`B'Block, Flat No.1, Ground
Floor, Near Colaba Post Office
Colaba, Mumbai- 400 005.

2. Smt. Viviana Fernandes.
   residing at F-6, Mayfair
   Apartments, Luis Miranda
   Road, Margao, Goa.

3. Shri Remetio alias
   Remedio Cunha.
   Residing at House No.105,
   Alleavaddo, Chinchinim,
   Salcete, Goa.

4. Shri Alvito Fernandes.
   Residing at House No.849,
   Carxeta, Velim, Salcete,
   Goa. … Petitioners.

V/s.

Smt. Joyce Colaco alias
Ivon Joyce Colaco, residing
at House No.848, Carxeta,
Velim, Salete, Goa. … Respondent.

M.S.Usgaonkar, senior counsel with
Iftikhar Agha for the petitioners.

Nitin Sardesai for the respondents.

CORAM : V.C.DAGA

DATED : 11th August 2006.

ORAL JUDGMENT :

Both these petitions were heard together. The interim orders passed by the trial Court are separate but parties to the petition are almost common; the facts are identical and issues

involved are similar as such both petition shall stand disposed of by this common judgment. The facts are taken from writ Petition No.510/2003.

Factual Matrix :

2. In the year 1999, the respondent No.1 herein filed suit being Regular Civil Suit No.232/99/D against petitioner Nos.1 and 2 and two others/ defendants therein in respect of land at Survey No.108/1 with a prayer to seek permanent injunction restraining the defendants from dismantling and/or interfering in any manner with the suit access and for declaration declaring them as owners of the suit access. Along with the suit, the plaintiffs filed Civil Misc.Application No.539/99/D for temporary injunction.

3. Subsequently, on 20th October, 1999, the petitioners herein filed Regular Civil Suit No.241/99/D against respondent Nos.1 and 2 herein with Civil Misc. Application No.572/99/D. On 7th December, 1999, respondent No.1 filed application for amendment of the plaint in Regular Civil Suit No.232/99/D to modify the survey number from Survey No.108/1 to 131/10. On 9th December, 1999,

respondent Nos.1 and 2 filed written statement in Regular Civil Suit No.241/99/D filed by the petitioners; and also filed reply to the application for temporary injunction along with affidavits and documents.

4. On 23rd December, 1999, the petitioners filed rejoinder in CMA No.572/99/D. They also filed written statement in respondents' Suit No.232/99/D and reply to the application for temporary injunction taken out therein.

5. The Civil Judge, Junior Division, Margao, after hearing the rival parties, vide his order dated 1st February, 2001, granted temporary injunction in the application moved by the petitioners in Suit No.241/99/D, whereas vide order dated 4th August, 2001 the application for temporary injunction taken out of respondent No.1 in Suit No.232/99/D came to be dismissed. The respondent Nos.1 and 2 preferred appeal being Misc. Civil Appeal No.19/2001 against the trial Court's order dated 1st February, 2001 granting temporary injunction in the petitioners' Suit No.241/99/D. Respondent No.1 filed another Misc.Civil Appeal No.97/2002 against the trial

Court's order dated 4th August, 2001 rejecting her application for temporary injunction in Suit No.232/99/D. Vide common order dated 1st October, 2002, the Additional District Judge, South Goa, Margaon disposed of both appeals, whereby Misc.Civil Appeal No.19/2001 and Misc.Civil Appeal No.97/2001, i.e. both appeals came to be allowed and orders impugned therein came to be set aside. The application for temporary injunction being Civil Misc.Application No.539/99/D taken out by the respondent in Suit No.232/99/D came to be allowed, whereas Civil Misc.Application No.572/99/D taken out by the petitioners in their Suit No.241/99/D came to be dismissed.

6. Thus, this common order passed by the lower appellate Court is a subject matter of challenge in these two independent petitions filed under Article 227 of the Constitution of India.

7. The impugned order passed by the lower appellate Court is dated 1st October, 2002. These petitions were filed in the year 2002. Both these petitions are pending in this Court without there being any interim relief. In other words, the impugned order is holding field since 1st October,

2002 i.e. almost for a period of more than three years. In this view of the matter, looking to the nature of the controversy involved in the suit and consensus between the parties, it would be in the interest of justice to direct expeditious disposal of both the suits; since these suits involving common questions and issues are pending since 1999. Hence this order.

O R D E R

The trial Court is directed to hear and dispose of both suits; being RCS No.232/99/D and RCS No.241/99/D as expeditiously as possible, at any rate, within a period of one year form the date of receipt of copy of this order. The trial Court shall decide the said suits on their own merits without getting influenced by the findings recorded by the lower appellate Court in the impugned order dated 1st October, 2002.

Both parties shall maintain status-quo prevailing as on date during the pendency of the suits. No party shall be entitled either to repair or demolish the access in respect of which these suits relate and the said approach shall be

used only for the purpose of access. Needless to mention that all rival contentions are kept open. This order shall not create any equity in favour of either of the parties and shall be without prejudice to the rights of the parties.

Both petitions stand disposed of in terms of this order. Accordingly, rule in both petitions is made absolute with no order as to costs.

(V.C. DAGA, J.)

skn/-